IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15301 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VERAVAL PEOPLES' COOPERATIVE BANK LTD - Petitioner(s)
Versus
PRABHUDAS RANCHHODBHAI KHAKHARIA & 2 - Respondent(s)

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Appearance :
MR RM CHHAYA for Petitioner(s) : 1,
RULE UNSERVED for Respondent(s) : 1,
MR SHIRISH JOSHI for Respondent(s) : 1,
MEENA VYAS for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/03/2006

ORAL JUDGMENT

1.With the consent of the learned advocates appearing for both sides, the matter is finally

heard.

2.The short facts of the case are that the petitioner-bank preferred the suit for recovery of Rs.1,08,175.54/- paisa with the interest against the respondents being Lavad Suit No.244 of 1993. The said suit was allowed and the award was passed on 16.11.2002 by the learned Nominee whereby the respondents who are original-defendants are directed to pay the amount of Rs.1,08,175.54/- paisa with the running interest at the rate of 18%+2% from 01.04.1993 and the cost of the suit of Rs.2620/-. It appears that the respondent No.1 herein preferred an appeal being Appeal No.5 of 2003 before the Gujarat State Co-operative Tribunal and in the said appeal, the Tribunal has passed the order on 24.09.2004 wherein the appeal was partly allowed and instead of running interest at the rate of 18%+2%, simple interest at the rate of 18% from the date of

loan is ordered to be recovered. Under these circumstances, the petitioner-bank has approached this Court by preferring the present petition.

3.It may be recorded that on 29.12.2004 when the matter was admitted, following order was passed by this Court (Coram: K.S. Jhaveri, J.):-

> “Rule. Interim relief is refused.
>
> The parties have agreed to abide by the decision of the Tribunal. Pursuant to this the respondent No.1 shall pay Rs.29000/- by way of full and final settlement of the decretal amount. It is clarified that the decision of the Tribunal will be binding on both the parties as agreed by the parties.
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> The matter is admitted for the limited purpose that this will not be treated as a precedent.”

4.Therefore, as such, it appears that the parties have agreed to abide by the decision of the

Tribunal. However, the apprehension canvassed on behalf of the petitioner by Mr. R.M. Chhaya is that number of suits preferred by the bank are pending either before the Nominee or before the Tribunal and if in such disputes, the interest awarded is at the simple rate instead of charging the interest as per the banking norms, in accordance with R.B.I. guidelines, the same may seriously prejudice the other proceedings before the nominee or before the Tribunal, as the case may be.

5.It is true that in normal circumstances, when the suit is decreed or an award is passed based on commercial transaction of loan, if the terms and conditions of the contract are proved, the Court or the Nominee or the Tribunal, as the case may be, would pass the award the interest as agreed between the parties. The said principle is required to be accepted until the date of filing of the suit. So far as the interest after the suit is concerned, though it

is for the discretion of the Court or Nominee or a Tribunal, as the case may be, such discretion is to be exercised judicially and while exercising such discretion, the Nominee or the Tribunal, as the case may be, normally would be guided by the agreed rate of interest prevailing or the agreed rate of interest as per the actual terms and conditions. In the present case, it appears that the Tribunal has not satisfactorily recorded the reasons, nor any reason is recorded for making departure from exercise of the power of awarding interest as per the agreement between the parties, even after the filing of the suit. The only ground mentioned is that the suit is filed late. No details are mentioned even date-wise for the delay caused and whether such delay can be attributed to the plaintiff or to the defendant. It does prima facie appear that the Tribunal has not properly recorded the reasons even if such a discretion by the Court was to

be exercised by the Tribunal by making departure from the normal principles of awarding interest as agreed between the parties after the filing of the Suit.

6. Further, it appears that in the present case, the parties have agreed to abide by the decision of the Tribunal and such agreement is recorded by this Court on 29.12.2004 when the petition is admitted and therefore, I find that no useful purpose would be served in sending the matter back to the Tribunal and the examination of such question would result into only an academic exercise. Therefore, as the parties have agreed in the present case, no further order is required to be passed to upset the decision of the Tribunal. The only observations and directions required in the present case would be to direct the office to send the copy of the order to the Tribunal as well as to the Nominee to consider the aforesaid observations henceforth at the time

when the interest is to be awarded in the Suit and to exercise the power in accordance with law while deciding the Suit or the appeal, as the case may be.

7. In view of above, subject to the aforesaid observations and directions and as the matter is settled between the parties, petition is disposed of accordingly. Office to send the copy of the order to the Gujarat State Co-operative Tribunal as well as to the learned Nominee. Rule discharged.

(JAYANT PATEL,J.)

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